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NOTE

from:	Portuguese delegation
to:	Delegations

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Subject:	Evaluation report on the fifth round of Mutual Evaluations "Financial crime and financial investigations"
	- Follow-up to Report on Portugal

This progress report follows up the recommendations formulated in the evaluation report on Portugal regarding the fifth round of mutual evaluations on financial crime and financial investigations (doc. 9518/2/10).

- 1.1. Evaluation report on Portugal (Doc. 12286/2/11 REV 2 GENVAL 71)**
- 1.2. Fifth round of mutual evaluations "Financial crime and financial investigations"**
- 1.3. Implementation of Recommendations**
- 1.4. Recommendations to Portugal**

- **Recommendation 1**

Consider elaborating a governmental policy towards financial crimes and financial investigations

The Ministry of Justice has recently prepared the revision of Criminal Code, the Criminal Procedure Code and other relevant laws in the criminal area, in order to prevent and fight corruption and other criminal offences, to improve procedural rules and to strength the criminal justice in the prevention and combating financial crimes.

Other measures taken previously, as the creation of a centralized database of bank accounts in 2011, and the establishment of the operational structure of the Asset Recovery Office, created by Law nr 45/2011, of 24 June, are part of the national strategy to improve financial investigations and to prevent and combat these criminal phenomena, based on the adoption of preventive measures and a strong and concrete repressive attitude. The measures approved are nowadays producing positive results.

- **Recommendation 2**

Consider mechanisms/ways to allow for more specialization by judges in financial crimes

The Centre for Judicial Studies (CEJ) is the entity responsible for providing initial and in-service training for all judges and public prosecutors. Several training activities have been carried out in order to provide training to judges and public prosecutors in the investigation, prosecution and judging economic and financial crime.

Thus, in the period of the last 18 months to which this report concerns, were held over three courses in tax law in Oporto, Coimbra and Lisbon, respectively in December 2011, May and July of 2012 and a cycle of conferences on economic and financial crime took place in January 2013.

- **Recommendation 3**

Review and redevelop the personnel management policy in order to strengthen existing units, foster inflow and promotion of individuals having particular experience or knowledge, and motivate investigators and prosecutors to acquire additional knowledge related to financial investigations.

The level of expertise required for entry into a career of criminal investigator is governed by Article 124 of Decree-Law nr 275-A/2000, of 9 November, which provides that those appointed as trainee inspectors shall be graduates in an appropriate area, and should have approved in a competition and completed a course of training ministered at the Criminal Police School (*Escola de Polícia Judiciária*).

The Portuguese commitment in prioritize the combating of corruption and economic and financial crime, is reflected in the considerable investment made by the Ministry of Justice by reinforcing the number of effectives in the Criminal Police (PJ) at a time of important budgetary constraints. The training course ministered by the Criminal Police School for the 80 successful candidates began on February 4, 2013.

The number of existing Public Prosecutors generally remained stable, although there was a trend to the increasing of Public Prosecutors integrating existing specialized units within the structures of the Public Prosecution Service, as the DCIAP or the Cybercrime Cabinet. On the other hand the number of public officials in functions decreased, given the increase of retirements and the nonexistence of new recruitments.

Regarding additional training, it were developed by the Criminal Police five specific training schemes addressed to those who work in the investigation of economic and financial crime area. These actions had the participation of 165 officials of the Criminal Police, between January and December of 2012.

The Attorney General's Office has also kept a special attention to the training of Public Prosecutors in investigations related to economic and financial crime, being some of the training schemes also aimed at judges, police authorities and other entities that support criminal investigations, for instance experts from the Tax Authority.

The training activities specifically targeted at economic and financial crime, organized between November of 2011 and January 2013, have included conferences, seminars, lectures, workshops and training courses in a total of nine (9) initiatives. The most recent was the Conference Cycle dedicated to the theme of economic and financial crime, promoted by the Centre for Judicial Studies in the law school of Lisbon, in January of 2013. Should be also noted the participation of Public Prosecutors in initiatives concerning money laundering promoted by the European Union.

Additionally to the mentioned actions new initiatives are planned to be undertaken by the Central Department for Criminal Investigation and Prosecution (DCIAP), in order to training magistrates on banking and fiscal areas. Currently is under discussion a training initiative on the crime of money laundering.

- **Recommendation 4**

Consider granting more resources to the Technical Advice Unit (NAT) in order to better support the prosecution services

As result of budgetary constraints, for the time being it will be difficult to implement this recommendation, by strengthening the human resources allocated to NAT (*Núcleo de Assessoria Técnica*). Instead, some experts who performed its functions in the NAT entered into a situation of retirement and still have to be replaced. Therefore, remains the lack of NAT elements providing technical support to Public Prosecutors in the framework of economic and financial investigations and proceedings.

- **Recommendation 5**

Reconsider its legislation, policy and law enforcement practices regarding currency transaction reports (CTRs).

Law nr 25/2008, of 5 June, establishes preventive and repressive measures to combat money laundering and terrorist financing, transposing into national law Directive 2005/60/EC of 26 October on the prevention of the use of the financial system and the activities and professions specially designated for the purpose of money laundering and terrorist financing.

Under this law a significant increase in the number of current transaction reports (CTRs) sent to the FIU is registered. According to the latest available statistics, in 2012 were received 2649 reports originated from financial and supervisory institutions, 4535 reports from non-financial entities and 1277 records of other entities, specially from the Tax Authority and Customs, with respect to controls of cash entering or leaving the European Union, and the controls on movements of cash within the European Community.

These communications led to the opening of 745 inquiries, of which 512 resulted in confirmed suspicious of the commission of crimes , that were sent to the Public Prosecution and for the opening of a criminal file.

The approval of the new FATF Recommendations in February 2012 and the negotiations of the draft fourth Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, presented by the Commission in February, lead to conclude that the amendments in the legislation in force at domestic level will occur probably in late 2014. This Directive is in a large extent based on international standards adopted by the Financial Action Task Force (FATF) in February 2012 and follows a harmonization approach with the fundamental review undertaken by FAFT.

- **Recommendation 6**

Swiftly implement its plans for establishing a single database for the central (DCIAP) and local Criminal Investigation and Prosecution Departments (DIAPs).

It was developed by the Central Department for Criminal Investigation and Prosecution (*DCIAP*), a specific database for storing, retrieving and managing all data on economic and financial crime. A thematic area was created with direct access to public in general, through the Attorney General's Office website, allowing to direct complaints of whistleblowers regarding corruption offences.

Another thematic area has been created within the information system of the Attorney General's Office (*SIMP*) which is being used as a network for information exchange on economic and financial crime, with access to Public Prosecutors with functions in the field of investigation, prosecution and trial.

At local Criminal Investigation and Prosecution Departments (*DIAP*'s) level a specific database to economic and financial crime has not yet created. However, the *DIAP* of Lisbon produced a study from which resulted the development of an internal project called "*Project Intelligence*" aiming to build a technological system to the analysis of the existing information on criminal investigations.

- **Recommendation 7**

Develop a clearly visible process throughout the criminal justice system in order to track the process of confiscating criminal assets right from the outset of the investigation and collect the appropriate statistics.

In order to comply with the Council Decision 2007/845/JHA, of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime, it was established, under the remit of the Criminal Police, the Asset Recovery Office (*GRA*), by Law nr 45/2011, of 24 of June, whose task are the identification, tracing and freezing of proceeds from, or property related to, crime, either at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it.

The GRA is also entrusted with the collection, analysis and processing of statistical data on the freezing, confiscation and allocation of proceeds from, or property related to crime. For doing that has been created a channel devoted to the collection and statistical evaluation, within the information system of the Attorney General's Office (SIMP). However, because GRA has no power to intervene in all financial investigations and because the freezing, confiscation and allocation of property can occur in proceedings in which GRA has no intervention, is underway the implementation of a global statistic system that will monitor the activity of the Public Prosecutors.

With regard to the management of assets, the administration of frozen or seized property in the scope of national proceedings or of international judicial cooperation acts is ensured by an office of the Institute for Financial Management and Justice Infra-structures, I.P. (IGFIJ, I.P.), under the Ministry of Justice, designated as Property Management Office (GAB).

Within their powers of administration, GAB is entrusted to protect, preserve and manage the property that has been seized or that is under State custody; determine the sale, allocate to the public service or destruct the referred property, within the strict respect for the principle of transparency; GAB perform all other duties that have been legally conferred upon it, at the request of GRA or of the judicial authorities whenever the value of the frozen property exceeds 5.100 Euros, bearing in mind a rational and efficient management of the administrated property and, if possible, its patrimonial increase.

Efforts are being developed to the implementation of centralized structures (to minimize costs) to receive the seized property in view of their preservation and management.

- **Recommendation 8**

Enhance mutual access to databases, especially between law enforcement agencies.

In this regard, must be consider the potential created by Law nr 36/2010 of 2 September, once the national centralized register of bank accounts, based on Bank of Portugal, was implemented in practice and the database is already working. It enormously facilitates the investigation of the proceeds of crime, regardless of the fact that the access to the database is not directly available to

the Criminal Police and to the FIU for their ordinary duties, since under the new system only judicial authorities will be able to access the database in the framework of criminal proceedings. However, the Criminal Police can accede to the information through the Public Prosecutor in charge with the investigative proceedings.

The access in real time to the databases of the Tax Authority for cases of money laundering and tax crimes, through the permanent liaison working group based in the FIU premises, involving officials from the FIU, the Tax Authority (includes officials from Customs) and the Criminal Police, is increasingly fast and facilitates ongoing investigations in relation to a broad catalog of evidence, namely asset information, real estate or tax information (IRS, IRC, VAT, IMI, IUC, intra-Community transactions).

On the other hand, the recent operationalization of the Asset Recovery Office, under the remit of Criminal Police, also implies the access to information held by other agencies as the Institute for Registry and Notary, the Tax Authority (including Customs), the Social Security, the Portuguese Insurance Institute, the Securities Market Commission and the Bank of Portugal.

- **Recommendation 9**

Reconsider and improve cooperation with Europol

and

- **Recommendation 10**

Improve the international exchange of information, especially by using the capabilities of Europol

The Financial Intelligence Unit (*UIF*) is a specialized department within the Criminal Police that perform their tasks in an independent and autonomous way, by processing collecting, centralising, processing and disseminating, at national level, information on the prevention and investigation of the offences of money laundering, terrorism financing and tax offences, while ensuring at national

level cooperation and liaison with the judicial authorities, the supervisory authorities of the financial sector and oversight authorities with the non-financial sector and with financial and non-financial institutions, as specified in Law nr. 25/2008 of 5 June 2008 (the AML/CFT Law), and, internationally, ensuring cooperation with financial intelligence units or equivalent bodies.

Any confirmation of suspicion of ML/TF gives rise to the forwarding of the information to the DCIAP, which opens a crime file. The information is then sent to the Criminal Police, for the investigating of the suspected offense. As a rule, it will be the operational unit of the Criminal Police charged with the investigation that forwards the relevant information or requests to Europol through the Europol National Unit (UNE).

Alongside the FIU provides support and assistance in transnational investigations conducted by the operational units of the Criminal Police, for instance in the field of drug trafficking, terrorism, organized crime and other serious offences. Moreover, international bilateral cooperation carried out by the Portuguese UIF using the Europol channel is numerous and swift.

Given the results achieved in the period of 18 months following the evaluation, in particular within the framework of the AWF's (AWF SOC - Serious Organized Crime), is possible to conclude that there was a significant improvement on cooperation and exchange of information using the capabilities and the support of Europol, particularly in the area of the following focal points:

- FP TERMINAL (OTHER MEANS OF PAYMENT)

Received 55 messages conveying or requesting information;

Provided and requested information within the framework of 14 investigations.

- FP SOYA (COUNTERFEIT CURRENCY)

Received 45 messages, conveying and/or requesting information;

Provided and/or requested information within three investigations for which it was received financial support from Europol.

- **FP MTIC (VAT FRAUD)**

Received two cooperation requests under this analysis file, from Bulgarian and French authorities, respectively. The Criminal Police was still represented in the plenary meeting of AWF MTIC held at Europol headquarters in April 2012.

- **FP SMOKE (ILLICIT TOBACCO TRADE)**

In this context was provided to the team responsible for this analysis file, detailed information about the operation "*Ilhéu*", following which five people were arrested and nine million cigarettes were seized on 23 October 2012.

- **Recommendation 11**

Review the mechanisms in transmitting information to Eurojust

Portugal fully complies with the requirements of Article 13 of the Eurojust Decision. The communications are being made directly through the contact point for international cooperation, always with good results.

Moreover have been maintained regular and frequent contacts between DCIAP and Eurojust, and the Portuguese Public Prosecutors are always available to give all information and full cooperation, as well as for all European Union member States .

However, Portugal would like to highlight that difficulties remain regarding the answers to requests of information sent to other EU member States.

As an example, the answer of Portuguese authorities to a rogatory letter is provided in a 3 months' maximum time. The answer to a rogatory letter send by Portuguese authorities sent to some EU member States takes – more than 2 years to be received, in the cases where an answer is provided.

- **Recommendation 12**

When setting up the national ARO, endow it with some operational competences in order to coordinate asset tracing investigations in real time.

As already mentioned before, the Assets Recovery Office (GRA) was created by Law nr 45/2011, of 24 June, under the remit of the Criminal Police. Its composition and coordination was established by Decree nr 269/2012, of 3 September and is effectively installed since October 2012, after orders nr 7 and 8, of 9 October issued by the National Director of the Criminal Police, which gave operational competences to the GRA in order to coordinate assets tracing investigations in real time.

This Office has the task of identifying, locating and seizing assets and proceeds of crime, both domestically and internationally, as well as collect, analyze and process statistical data on seizures, loss and disposal of seized goods or products. Its jurisdiction covers the financial and patrimonial investigation in crimes punishable with a custodial sentence equal or higher than 3 years imprisonment and with an estimated value of more than € 102,000.

- **Recomendação 13**

Promote the wider use of extended confiscation as provided for in Article 7 of Law 5/2002; (cf. 4.3) through an adjustment or amendment of the wording of this provision, in order to make it more enforceable.

For the time being no changes were made to Law nr 7/2002, taking into account that the current version allow for the enforcement of extended confiscation by Public Prosecutors. However, by a decision of the Minister of Justice the internal assessment of the legislative needs in the criminal area is underway, in order to fully comply with all the entire international commitments resulting from legal instruments or recommendations made to Portugal in the framework of mutual evaluations in different areas.

- **Recomendação 14**

Review the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

The review of the recommendations was made and the answers are provided in the present document.
